

PART II: STATUTES

II. STATUTES

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¹ Although M.G.L. c.150A primarily covers private employers, certain public authorities, including the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Turnpike Authority, Massachusetts Port Authority, Massachusetts Parking Authority, and Wood's Hole, Martha's Vineyard and Nantucket Steamship Authority are covered by M.G.L. c.150A. See, M.G.L. c.161A; Chapter 760 of the Acts of 1962.

M.G.L. c.150A: LABOR RELATIONS (Private Employees)*Section 1. Public policy.*

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing industry and trade by (a) impairing the efficiency, safety or operation of the instrumentalities of industry and trade; (b) occurring in the current of industry and trade; (c) materially affecting, restraining or controlling the flow of raw materials or manufactured or processed goods, or the prices of such materials or goods; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for such goods in industry or trade.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects industry and trade, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards industry and trade from injury, impairment or interruption, and promotes the flow of industry and trade by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the commonwealth to eliminate the causes of certain substantial obstructions to the free flow of industry and trade and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

It is further declared to be the policy of the commonwealth, in the interests of preserving the continuity and improving the quality of health care within the commonwealth: (a) to promote collective bargaining between health care facilities and their nurse employees and nonprofessional employees, except members of religious orders, irrespective of whether or not any such facility is operated for profit or as a public charity; (b) to protect the right of nurse employees and nonprofessional employees of health care facilities, except members of religious orders, to organize and select collective bargaining representatives of their own choosing; (c) to prevent lockouts, strikes, slowdowns or withholding of goods and services in health care facilities; and (d) to provide for arbitration of disputes or grievances arising

between health care facilities and their nurse employees and nonprofessional employees if they cannot be adjusted through collective bargaining.

It is further declared to be the policy of the commonwealth, in the interest of allowing certain employees full freedom of associations and to eliminate strife and other obstructions: (a) to promote collective bargaining between nonprofit institutions and their nonprofessional employees, except members of religious orders, (b) to protect the right of nonprofessional employees of nonprofit institutions, except members of religious orders, to organize and select collective bargaining representatives of their own choosing, and (c) to prevent lockouts, strikes, slowdowns or withholding of goods or services in nonprofit institutions.

It is further declared to be the policy of the commonwealth, in the interest of allowing certain employees full freedom of association and to eliminate strife and other obstructions: (a) to promote collective bargaining between vendors who contract with or receive funds from the commonwealth or its political subdivisions, or both, to provide social, protective, legal, medical, custodial, rehabilitative, respite, nutritional, employment, educational, training, and other similar services to the commonwealth or its political subdivisions and their employees; (b) to protect the right of employees of such vendors to organize and select collective bargaining representatives of their own choosing; (c) to prevent lockouts, strikes, slowdowns or withholding of goods or services.

Section 2. Definitions.

When used in this chapter

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The word "employer" shall include any person acting in the interest of an employer, directly or indirectly, and shall include any health care facility, any nonprofit institution, and any vendor who contracts with or receives funds from the commonwealth or its political subdivisions, or both, to provide social, protective, legal, medical, custodial, rehabilitative, respite, nutritional, employment, educational, training, and other similar services to the commonwealth or its political subdivisions, but shall not include the commonwealth or political subdivision thereof, except in the case of a health care facility, or any labor organization, other than when acting as an employer, or anyone acting in the capacity of officer or agent of such labor organization.

(3) Except as otherwise provided in section three A, the word "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, and shall include any nurse or nonprofessional employee of a health care facility or of any nonprofit institution, except members of religious orders, or any employees of vendors who contract with or receive funds from the commonwealth or its political subdivisions to provide social, protective, legal, medical,

custodial, rehabilitative, respite, nutritional, employment, educational, training, and other similar services to the commonwealth or its political subdivisions, but shall not include any individual employed as an agricultural worker, except as provided in section five A, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "unfair labor practice" means any unfair labor practice listed in section four.

(7) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee.

(8) The term "commission" means the labor relations commission existing under section nine O of chapter twenty-three.

(9) The term "one-man unit" means a single employee of an employer who employs more than one employee in the same occupation within the commonwealth.

(10) The term "health care facility" shall include any person, including the commonwealth or any political subdivision thereof, acting in the interest of an employer, directly or indirectly, and engaged, whether or not for profit or as a public charity, in the operation of a general, mental, chronic disease, tuberculosis, or other type of hospital, clinic or infirmary, of a convalescent or nursing home, of a visiting nurses association, of a public health agency, or of any related facility such as a laboratory, an outpatient department, a nurses' home or a training facility.

(11) The term "nurse employee" means any registered nurse or licensed practical nurse, except that it does not include any member of a religious order.

Section 3. Rights of employees.

Employees, or a single employee in a one-man unit, shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 3A. Domestic service employee defined; violations; discharge; presumption; damages; costs.

Anything contained in this chapter to the contrary notwithstanding as regards sections one, two, three, four (1), four (4), ten, eleven and twelve, the term "employee" shall include any individual, over the age of seventeen, employed in the domestic service of any family or person at his home for not less than sixteen hours per week. In the event of a violation of section four (1) or four (4) by an employer of any such individual, the department of labor and workforce development shall have all necessary and appropriate powers to conduct an investigation of such violation. The discharge of any such individual, within three months after the making of a report or complaint of any violation of section four (1) or four (4), known to the employer, shall create a rebuttable presumption that such discharge is a reprisal against such individual. In such case, the employer of such individual shall be liable for damages which shall not be less than one month's wages nor more than two months' wages of such individual, and the costs of the suit, including a reasonable attorney's fee.

Section 4. Unfair labor practices by employers.

It shall be an unfair labor practice for an employer^a

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that, subject to rules and regulations made and published by the commission pursuant to section nine R of chapter twenty-three, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay. An employer shall not be prohibited from paying regular initiation fees, dues and assessments to any labor organization in which he is a member or is eligible for membership.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization; provided, that nothing in this chapter shall preclude an employer from making and carrying out, except as provided in subsection six hereof, an agreement with a labor organization (not established, maintained or assisted by any action defined in this chapter as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in subsection (a) of section five in the appropriate collective bargaining unit covered by such agreement when made, but no such agreement shall be deemed to apply to any employee who is not eligible for full membership and voting rights in such labor organization.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of subsection (a) of section five.

(6) To discharge or otherwise discriminate against any employee because he is not a member in good standing of a labor organization with whom the employer has made an agreement to require as a condition of employment membership therein, unless

(A) Such labor organization shall have certified to the employer that such employee^a

(1) Was denied admission to, or deprived of, membership in good standing as a result of a bona fide occupational disqualification or the administration of discipline; and

(2) Has exhausted the remedies available to him within the labor organization including any right of appeal permitted by its constitution or by-laws; and

(B) Such employee shall have exhausted the remedies available to him under sections six A and six B.

Section 4A. Unfair labor practices by individuals or labor organizations.

It shall be an unfair labor practice for any person or labor organization^a

(1) To seize or occupy unlawfully private property as a means of forcing settlement of a labor dispute; or

(2) To authorize or engage in any strike, slowdown, boycott or other concerted cessation of work or withholding of patronage for the purpose of^a

(a) Bringing about, directly or indirectly, the commission of any unfair labor practice, or

(b) Injuring or interfering with the trade or business of any person because such person has refused to commit an unfair labor practice; or

(c) Interfering with, restraining or coercing employees in their choice or rejection of representatives for the purpose of collective bargaining after the commission has determined in a proceeding under section five that such employees do not desire to be represented by such labor organization; or

(3) To aid in any concerted activities of the types described in this section by giving direction or guidance in the conduct thereof or by providing funds for the payment of strike, unemployment or other benefits to persons participating therein.

Section 4B. Refusal to bargain collectively with employer.

It shall be an unfair labor practice for a labor organization to refuse to bargain collectively with any employer who has recognized it as the exclusive representative of employees in a unit appropriate for the purposes of collective bargaining.

Section 4C. Health care facilities; unfair labor practices by employers or employees.

Section 4C. It shall be an unfair labor practice:

(1) For any health care facility or any charitable home for the aged to institute, declare or cause, or to attempt to institute, declare or cause, any lockout of any of its nurse or nonprofessional employees; or

(2) For any nurse or nonprofessional employee of a health care facility or of any charitable home for the aged, or for a representative of any such employee, or for any other person, to engage in, induce or encourage any strike, work stoppage, slowdown or withholding of customary goods or services by such employees or other persons at such health care facility or home.

Section 5. Representatives; determining and certifying; grievances; units; review; proceedings to enforce or review orders.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, including representatives selected or designated by an individual in a one-man unit, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The commission shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of this chapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, profession or craft unit, plant unit, or subdivision thereof, or a one-man unit where the commission deems such unit to be appropriate; provided that, in any case where the majority of employees of a particular profession or craft shall so decide, the commission shall designate such profession or craft as a unit appropriate for the purpose of collective bargaining; and provided, further, that, for purposes of this chapter, registered nurses and licensed practical nurses shall not be deemed to be members of the same particular profession.

(c) Whenever a question affecting industry, trade or health care arises concerning the representation of employees, the commission may investigate such controversy and certify to the parties, in writing, the name or names of the representatives who have been designated or selected. For the purpose of this section, the commission shall be authorized to investigate petitions requesting the decertification of an exclusive representative. In any such investigation, the commission shall provide for an appropriate hearing upon due notice either in conjunction with a proceeding under section six or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives. The commission may establish such rules or regulations as it deems appropriate to effectuate the policies of this chapter for the filing of petitions for investigation and certification by employers or employees or their representatives and shall include therein provision for the filing of a petition by an employer whenever it is alleged

(1) That two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in a bargaining unit or units claimed by them to be appropriate; or

(2) That a labor organization not theretofore recognized as the representative of a majority of the employees in the bargaining unit claimed by it to be appropriate has requested the employer to bargain with it as the exclusive representative of such employees, or without such request is attempting to secure such recognition by strike, slowdown, boycott or other concerted cessation of work or withholding of patronage.

(d) Any hearing under subsection (c) of this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case; in addition, any party may, within ten days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary statements filed by the parties, if any, together with such other evidence as the commission may require.

(e) Whenever an order of the commission made pursuant to subsection (c) of section six is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section six and thereupon the decree of the court enforcing, modifying or setting aside in whole or in part the order of the commission shall be made and entered upon the pleadings, testimony and proceedings set forth in such transcript.

Section 5A. Agricultural workers; representatives

In the case of a person engaged in agriculture, as hereinafter defined, and having a permanent hired work force of more than four agricultural workers who are not members of his family, the provisions of section five shall apply; provided that only the employer unit shall be deemed appropriate for collective bargaining purposes; and provided further that nothing in this section nor in said section five shall be construed as constituting authority for any action or proceeding to nullify, amend or otherwise modify any contract or agreement, or any provision thereof, which is reached by any such person for the seasonal employment of agricultural workers with the official sanction either of the government of any territorial possession of the United States or of the United States department of labor. As used in this section, the term "agriculture" includes horticulture, floriculture and any other commercial enterprise involving the production of food or fiber.

Section 6. Prevention of unfair labor practices; powers of commission; proceedings; judicial review.

(a) The commission is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in sections four, four A, four B and four C affecting industry, trade or health care. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the commission, or any agent or agency designated by the commission for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the commission or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent or agency conducting the hearing or the commission in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the commission, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) If upon the record before him such member or agent shall determine that an unfair labor practice has been committed by a person named in the complaint, he shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such further affirmative action as will effectuate the provisions of this chapter. If the member or agent determines that an unfair labor practice has not been committed, he shall issue an order dismissing the complaint. An order issued pursuant to this subsection shall become final and binding unless, within ten days after notice thereof, any party requests review by the full commission. A review may be made upon a written statement of the case by the member or agent agreed to by the parties, or upon written statements furnished by the parties, or, if any party or the commission requests, upon a transcript of the testimony taken at the preliminary hearing, if any, together with such other testimony as the commission may require.

If upon the record before it the commission determines that an unfair practice has been committed it shall state its findings of fact and issue and cause to be served on the person an order requiring such person to cease and desist from such unfair labor practice, and to take such further affirmative action as will effectuate the provisions of this chapter. If upon the record before it the commission determines that an unfair labor practice has not been committed, it shall state its findings of fact and shall issue an order dismissing this complaint.

(d) Until the record in a case shall have been filed in a court, as hereinafter provided, the commission may at any time, upon reasonable notice and in such manner as it shall

deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The commission may institute appropriate proceedings in the appeals court for enforcement of its final orders.

(f) Any party aggrieved by a final order of the commission may institute proceedings for judicial review in the appeals court within thirty days after receipt of said order.

The proceedings in the appeals court shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A.

Section 6A. Denial of admission to, and suspension or expulsion from, a labor organization; proceedings for relief; voting rights of non-participants in insurance plans and of local organizations in conventions.

Any employee who is required as a condition of employment to be a member in good standing of a labor organization may file with the commission a charge alleging (1) that, although eligible to membership, he has been unfairly denied admission to, or unfairly suspended or expelled from membership in, such organization for reasons other than malfeasance in office or nonpayment of regular initiation fees, dues, or assessments and (2) that such labor organization has requested, or is about to request, his employer to discharge or otherwise discriminate against him because of his failure to maintain membership in good standing in such organization; provided, that such charge shall be filed not more than fifteen days after notice of such request has been given the employee by the labor organization. Upon filing of such charge, the commission shall have power to issue and cause to be served upon the labor organization a complaint stating the charge in that respect and containing a notice of hearing. The notice shall be given and the subsequent proceedings shall be conducted in the manner provided in section six. If upon all the evidence the commission shall determine that the employee was unfairly denied admission to membership in such organization, or that such discipline

(1) Was imposed by the labor organization in violation of its constitution and by-laws; or

(2) Was imposed without a fair trial, including an adequate hearing and opportunity to defend; or

(3) Was not warranted by the offense, if any, committed by the employee against the labor organization; or

(4) Is not consistent with the established public policy of the commonwealth; then the commission shall state its determinations and shall issue and cause to be served on the labor organization an order requiring it, in its discretion, either to admit or restore the employee to membership in good standing together with full voting rights, or else to refrain from seeking to bring about any discrimination against him in his employment because he is not a member in good standing, and to return to him such union dues and assessments as may have been collected from him during the period of his suspension or expulsion from

the union. If the commission shall not make such a determination after hearing, it shall enter an order dismissing the charge filed by the employee.

Nothing contained in this section or in section four shall be deemed to require a labor organization as a condition of making or enforcing a contract requiring membership therein as a condition of employment, to accord to non-participants in an insurance plan the right to vote on questions pertaining thereto or to grant local organizations voting rights in a convention proportionate to their membership.

Section 6B. Review of order of commission.

Any person aggrieved by a final order of the commission under section six A granting or denying relief, may obtain a review of such order in the manner provided in section six.

Section 6C. Payment of dues and assessments during disciplinary and legal proceedings.

During any disciplinary proceedings within a labor organization or any proceedings under sections six A and six B, or either of them, the employee shall continue to pay the regular union dues and assessments.

Section 7. Powers of commission and courts relative to hearings and investigations; self-incrimination; service of papers; witness fees; papers and information furnished by other departments.

For the purpose of all hearings and investigations which, in the opinion of the commission, are necessary and proper for the exercise of the powers vested in it by sections five, six, six A and six B

(1) The commission, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the commission shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the commission, its member, agent or agency conducting the hearing or investigation. Any member of the commission, or any agent or agency designated by the commission for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the commonwealth, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, the superior court within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, its member, agent or agency, there to produce evidence if so ordered, or there to give testimony,

touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the commission, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders and other process and papers of the commission, its member, agent or agency may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of service of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the commission, its member, agent or agency shall be paid the same fees and mileage that are paid witnesses in civil cases before the courts of the commonwealth, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the commonwealth.

(5) All process of any court to which application may be made under this chapter may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the commonwealth, when directed by the governor, shall furnish the commission, upon its requests, all records, papers and information in their possession relating to any matter before the commission.

Section 8. Interference with member or agent of commission.

Any person who shall wilfully resist, prevent, impede or interfere with any member of the commission or any of its agents or agencies in the performance of duties pursuant to this chapter shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

Section 9. Right to strike.

Nothing in this chapter, except as provided in sections four A and four C, shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Section 9A. Grievances or disputes between health care facilities and nurses.

(a) In the event of the existence of a grievance or a dispute between a health care facility or a charitable home for the aged and an organization designated or selected as the exclusive representative of any nurse or nonprofessional employee of such facility or of such home for the purposes of collective bargaining in accordance with section five, and if such grievance or dispute has not been settled by collective bargaining after reasonable effort so to do by either party, and if there is no collective bargaining agreement in force between the parties, or such an agreement is in force but it contains no provision to submit the current grievance or dispute, as the case may be, to arbitration, the procedures provided by chapter one hundred and fifty C shall be available, on application of an aggrieved party, to determine the controversy as though the parties had negotiated a collective bargaining agreement containing a provision as described in section one of said chapter one hundred and fifty C to submit to arbitration and such agreement were then in force; provided, however, that the procedures provided by said chapter one hundred and fifty C shall not be available to assist or require arbitration of any grievance or dispute involving a health care facility owned and operated by the commonwealth or a political subdivision thereof; and provided, further, that in the case of a grievance or a dispute involving any health care facility not owned and operated by the commonwealth or a political subdivision thereof or involving a charitable home for the aged it shall not be a ground for refusing to grant an order for arbitration under paragraph (a) of section two of said chapter one hundred and fifty C, or for granting an application for stay of an arbitration proceeding under paragraph (b) of said section, or for vacating an award under clause (5) of paragraph (a) of section eleven of said chapter one hundred and fifty C, that there is no agreement to arbitrate.

(b) As used in this section the word "grievance" shall mean any controversy or claim arising out of or relating to the interpretation, application or breach of the provisions of an existing collective bargaining agreement between a health care facility or charitable home for the aged and any of its nurse or nonprofessional employees or their representatives; the word "dispute" shall mean all other controversies, claims or disputes between a health care facility or charitable home for the aged and any of its nurse or nonprofessional employees, or their representatives concerning rates of pay, hours or other terms or conditions of employment in such facility or home, including, but not limited to, controversies, claims or disputes arising in the course of negotiation, fixing, maintaining, changing or arranging any such terms or conditions.

Section 10. Conflict of laws; federal statutes and regulations.

(a) Wherever the application of the provisions of any other law of this commonwealth conflicts with the application of the provisions of this chapter, this chapter shall prevail.

(b) This chapter shall not be deemed applicable to any unfair labor practice involving employees who are subject to and protected by the Federal Railway Labor Act, or to any unfair labor practice governed exclusively by the national labor relations act or other federal statute or regulations issued pursuant thereto, unless the federal agency administering such act, statute or regulation has declined to assert jurisdiction thereof, or except where

such federal agency has conceded to the commission jurisdiction over any such case or proceedings.

Section 11. Partial invalidity.

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 12. Title of statute.

This chapter may be cited as the "State Labor Relations Law".

M.G.L. c.150E. LABOR RELATIONS: PUBLIC EMPLOYEES

Section 1. Definitions.

The following words and phrases as used in this chapter shall have the following meaning unless the context clearly requires otherwise:

"Board", the board of conciliation and arbitration established under section seven of chapter twenty-three.

"Commission", the labor relations commission established under section nine O of chapter twenty-three.

"Cost items", the provisions of a collective bargaining agreement which require an appropriation by a legislative body.

"Employee" or "public employee", any person in the executive or judicial branch of a government unit employed by a public employer except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees, and members of the militia or national guard and employees of the commission, and officers and employees within the departments of the state secretary, state treasurer, state auditor and attorney general. Employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration. Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter.

"Employee organization", any lawful association, organization, federation, council, or labor union, the membership of which includes public employees, and assists its members to improve their wages, hours, and conditions of employment.

"Employer" or "public employer", the commonwealth acting through the commissioner of administration, or any county, city, town, district, or other political subdivision acting through its chief executive officer, and any individual who is designated to represent one of these employers and act in its interest in dealing with public employees, but excluding authorities created pursuant to chapter one hundred and sixty-one A and those authorities included under the provisions of chapter seven hundred and sixty of the acts of nineteen hundred and sixty-two. In the case of school employees, the municipal employer shall be represented by the school committee or its designated representative or representatives. For this purpose, the chief executive officer of a city or town or his designee shall participate and vote as a member of the city or town school committee; provided, however, that if there is no town manager or town administrator in a town, the chairman of the board of selectmen or his designee shall so participate and vote. In the

case of a regional school district, said chief executive officers or chairmen of boards of selectmen, as the case may be, of the member cities and towns shall, in accordance with regulations to be promulgated by the board of education, elect one of their number to represent them pursuant to the requirements of this section. In the case of employees of the system of public institutions of higher education, the employer shall mean the board of higher education or any individual who is designated to represent it and act in its interest in dealing with employees, except that the employer of employees of the University of Massachusetts shall be the board of trustees of the university or any individual who is designated to represent it and act in its interest in dealing with employees. In the case of judicial employees, the employer shall be the chief administrative justice of the trial court or any individual who is designated by him to represent him or act in his interest in dealing with judicial employees. In the case of employees of the state lottery commission, employer shall mean the state lottery commission or its designee. In the case of employees of the Massachusetts Water Resources Authority, the employer shall mean the Massachusetts Water Resources Authority. In the case of employees of the Suffolk county sheriff's department, employer shall mean the sheriff of Suffolk county or any individual who is designated by him to represent him or act in his interest in dealing with such employees.

"Incremental cost items", the provisions of a collective bargaining agreement that require, in respect of any fiscal year, an appropriation by a legislative body that is greater than the appropriation so required in the preceding fiscal year; provided, however, that in respect of the first fiscal year or portion thereof during which an agreement has effect, "incremental cost items" shall mean the provisions of a collective agreement that require an appropriation by a legislative body of monies that are newly required by the employer to discharge the obligations arising under the terms of such agreement.

"Legislative body", the general court in the case of the commonwealth or a county, the city council or town meeting in the case of a city, town or district, or any body which has the power of appropriation with respect to an employer as defined in this chapter.

"Professional employee", any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes. Professional employee shall include a detective, member of a detective bureau or police officer who is primarily engaged in investigative work in any city or town police department which employs more than four hundred people.

"Strike", a public employee's refusal, in concerted action with others, to report for duty, or his willful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring

immediately preceding the alleged strike, or in the absence of any such agreement, by written personnel policies in effect at least one year prior to the alleged strike; provided that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to conditions of employment.

Section 2. Collective bargaining; self organization.

Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of service fees to an exclusive representative as provided in section twelve.

Section 3. Bargaining units; rules and regulations; procedures; officers excepted.

The commission shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees votes for inclusion in such unit; provided, however, that in any fire department, or any department in whole or in part engaging in, or having the responsibility of, fire fighting, no uniformed member of the department subordinate to a fire commissioner, fire commissioner, public safety director, board of engineers or chief of department shall be classified as a professional, confidential, executive, administrative or other managerial employee for the purpose of this chapter.

No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director or chief of a department or agency of the commonwealth or any political subdivision thereof, or clerk, temporary clerk or assistant clerk of any court, or chief probation officer or acting chief probation officer of any court or region, including, without limitation within the term, any division or department of the trial court, or any other managerial or confidential employee shall be included in an appropriate bargaining unit or entitled to coverage under this chapter.

The appropriate bargaining unit in the case of the uniformed members of the state police shall be all such uniformed members in titles below the rank of lieutenant. The appropriate bargaining units for judicial employees within the provisions of this chapter shall be a public safety professional unit composed of all probation officers and court officers, and a unit composed of all nonmanagerial or nonconfidential staff and clerical personnel employed by the judiciary; provided that court officers in the superior court department for

Suffolk and Middlesex counties shall be represented by such other bargaining units as they may elect.

The appropriate bargaining unit in the case of employees of the state lottery commission shall be all employees below the rank of assistant director.

Section 4. Exclusive representative; hearing; election; stipulation; certification; review.

Public employers may recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining. All notices relative to a representation petition and all elections shall be posted at the request of the commission ten days prior to a hearing in a conspicuous place where the affected employees are employed.

The commission, upon receipt of an employer's petition alleging that one or more employee organizations claims to represent a substantial number of the employees in a bargaining unit, or upon receipt of an employee organization's petition that a substantial number of the employees in a bargaining unit wish to be represented by the petitioner, or upon receipt of a petition filed by or on behalf of a substantial number of the employees in a unit alleging that the exclusive representative therefor no longer represents a majority of the employees therein, shall investigate, and if it has reasonable cause to believe that a substantial question of representation exists, shall provide for an appropriate hearing upon due notice. If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether, or by which employee organization the employees in an appropriate unit desire to be represented, and shall certify any employee organization which received a majority of the votes in such election as the exclusive representative of such employees.

Except for good cause no election shall be directed by the commission in an appropriate bargaining unit within which a valid election has been held in the preceding twelve months, or a valid collective bargaining agreement is in effect. The commission shall by its rules provide an appropriate period prior to the expiration of such agreements when certification or decertification petitions may be filed.

Nothing in this section shall be construed to prohibit a stipulation, in accordance with regulations of the commission, by an employer and an employee organization for the waiving of hearing and the conducting of a consent election by the commission for the purpose of determining a controversy concerning the representation of employees.

Any hearing under this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case. In addition any party may, within ten days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary

statements filed by the parties, if any, together with such other evidence as the commission may require.

Section 5. Exclusive representative; powers and duties; grievances.

The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

An employee may present a grievance to his employer and have such grievance heard without intervention by the exclusive representative of the employee organization representing said employee, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

Section 6. Negotiations; meetings.

The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards or productivity and performance, and any other terms and conditions of employment, including without limitation, in the case of teaching personnel employed by a school committee, class size and workload, but such obligation shall not compel either party to agree to a proposal or make a concession; provided, however, that in no event shall the right of any employee to run as a candidate for or to hold elective office be deemed to be within the scope of negotiation.

Section 7. Collective bargaining agreements; term; appropriation requests; provisions; legal conflicts, priority of agreement.

(a) Any collective bargaining agreement reached between the employer and the exclusive representative shall not exceed a term of three years. The agreement shall be reduced to writing, executed by the parties, and a copy of such agreement shall be filed with the commission and with the house and senate committees on ways and means forthwith by the employer.

(b) The employer, other than the board of higher education or the board of trustees of the University of Massachusetts, a county sheriff or the state lottery commission, shall submit to the appropriate legislative body within thirty days after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein; provided, that if the general court is not in session at that time, such request shall be submitted at the next session thereof. If the appropriate legislative body duly rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further bargaining. The provisions

of the preceding two sentences shall not apply to agreements reached by school committees in cities and towns in which the provisions of section thirty-four of chapter seventy-one are operative.

(c) The provisions of this paragraph shall apply to the board of higher education, the board of trustees of the University of Massachusetts, a county sheriff and the state lottery commission.

Every such employer shall submit to the governor, within thirty days after the date on which a collective bargaining agreement is executed by the parties, a request for an appropriation necessary to fund such incremental cost items contained therein as are required to be funded in the then current fiscal year, provided, however, that if such agreement first has effect in a subsequent fiscal year, such request shall be submitted pursuant to the provisions of this paragraph. Every such employer shall append to such request an estimate of the monies necessary to fund such incremental cost items contained therein as are required to be funded in each fiscal year, during the term of the agreement, subsequent to the fiscal year for which such request is made and shall submit to the general court within the aforesaid thirty days, a copy of such request and such appended estimate; provided, further, that every such employer shall append to such request copies of each said collective bargaining agreement, together with documentation and analyses of all changes to be made in the schedules of permanent and temporary positions required by said agreement. Whenever the governor shall have failed, within forty-five days from the date on which such request shall have been received by him, to recommend to the general court that the general court appropriate the monies so requested, the request shall be referred back to the parties for further bargaining.

(d) If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and any municipal personnel ordinance, by-law, rule or regulation; the regulations of a police chief pursuant to section ninety-seven A of chapter forty-one or of a police commissioner or other head of a police or public safety department of a municipality; the regulations of a fire chief or other head of a fire department pursuant to chapter forty-eight; any of the following statutory provisions or rules or regulations made thereunder:

- (a) the second paragraph of section twenty-eight of chapter seven;
- (a1/2) section six E of chapter twenty-one;
- (b) sections fifty to fifty-six, inclusive, of chapter thirty-five;
- (b1/2) section seventeen I of chapter one hundred and eighty;
- (c) section twenty-four A, paragraphs (4) and (5) of section forty-five, paragraphs (1), (4) and (10) of section forty-six, section forty-nine, as it applies to allocation appeals, and section fifty-three of chapter thirty;
- (d) sections twenty-one A and twenty-one B of chapter forty;

(e) sections one hundred and eight D to one hundred and eight I, inclusive, and sections one hundred and eleven to one hundred and eleven I, inclusive, of chapter forty-one;

(f) section thirty-three A of chapter forty-four;

(g) sections fifty-seven to fifty-nine, inclusive, of chapter forty-eight;

(g 1/2) section sixty-two of chapter ninety-two;

(h) sections fourteen to seventeen E, inclusive, of chapter one hundred and forty-seven;

(i) sections thirty to forty-two, inclusive, of chapter one hundred and forty-nine;

(j) section twenty-eight A of chapter seven;

(k) sections forty-five to fifty, inclusive, of chapter thirty;

(l) sections thirty, thirty-three and thirty-nine of chapter two hundred and seventeen;

(m) sections sixty-one, sixty-three and sixty-eight of chapter two hundred and eighteen;

(n) sections sixty-nine to seventy-three, inclusive, and seventy-five, eighty and eighty-nine of chapter two hundred and twenty-one;

(o) section fifty-three C of chapter two hundred and sixty-two;

(p) sections eighty-four, eighty-five, eighty-nine, ninety-four and ninety-nine B of chapter two hundred and seventy-six;

(q) section eight of chapter two hundred and eleven B, the terms of the collective bargaining agreement shall prevail.

Section 8. Grievance procedure; arbitration.

The parties may include in any written agreement a grievance procedure culminating in final and binding arbitration to be invoked in the event of any dispute concerning the interpretation or application of such written agreement. In the absence of such grievance procedure, binding arbitration may be ordered by the commission upon the request of either party; provided that any such grievance procedure shall, wherever applicable, be exclusive and shall supercede any otherwise applicable grievance procedure provided by law; and further provided that binding arbitration hereunder shall be enforceable under the provisions of chapter one hundred and fifty C and shall, where such arbitration is elected by the employee as the method of grievance resolution, be the exclusive procedure for resolving any such grievance involving suspension, dismissal, removal or termination notwithstanding any contrary provisions of sections thirty-nine and forty-one to forty-five, inclusive, of chapter thirty-one, section sixteen of chapter thirty-two, or sections forty-two through forty-three A, inclusive, of chapter seventy-one. Where binding arbitration is provided under the terms of a collective bargaining agreement as a means of resolving grievances concerning job abolition, demotion, promotion, layoff, recall, or appointment and

where an employee elects such binding arbitration as the method of resolution under said collective bargaining agreement, such binding arbitration shall be the exclusive procedure for resolving any such grievance, notwithstanding any contrary provisions of sections thirty-seven, thirty-eight, forty-two to forty-three A, inclusive, and section fifty-nine B of chapter seventy-one.

Section 9. Impasses in negotiations.

After a reasonable period of negotiation over the terms of a collective bargaining agreement, either party or the parties acting jointly may petition the board for determination of the existence of an impasse. Upon receipt of such petition, the board shall commence an investigation forthwith to determine if the parties have negotiated for a reasonable period of time and if an impasse exists, within ten days of the receipt of such petition, the board shall notify the parties of the results of its investigation. Failure to notify the parties within ten days shall be taken to mean that an impasse exists.

Within five days after such determination, the board shall appoint a mediator to assist the parties in the resolution of the impasse. In the alternative, the parties may agree upon a person to serve as a mediator and shall notify the board of such agreement and choice of mediator. Any such mediator shall be empowered to order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for said purpose of resolving the impasse and negotiating such an agreement.

After a reasonable period of mediation from the date of appointment, said mediator shall issue to the board a report indicating the results of his services in resolving the impasse.

If the impasse continues after the conclusion of mediation, either party or the parties acting jointly may petition the board to initiate fact-finding proceedings. Upon receipt of such petition, the board shall appoint a fact-finder, representative of the public, from a list of qualified persons maintained by the board. In the alternative, the parties may agree upon a person to serve as fact-finder and shall notify the board of such agreement and choice of fact-finder. No person shall be named as a fact-finder who has represented an employer or employee organization within the preceding twelve months. The fact-finder shall be subject to the rules of the board and shall, in addition to powers delegated to him by the board, have the power to mediate and to make recommendations for the resolution of the impasse. The fact-finder shall transmit his findings and any recommendations for the resolution of the impasse to the board and to both parties within thirty days after the record is closed. If the impasse remains unresolved ten days after the transmittal of such findings and recommendations, the board shall make them public.

The parties by their own agreement may mutually waive the fact-finding provisions contained herein and may petition the board for arbitration pursuant to sections four or four B of chapter one thousand and seventy-eight of the acts of nineteen hundred and seventy-three when applicable. Said waiver shall not constitute a bar to any arbitration award.

Any arbitration award in a proceeding voluntarily agreed to by the parties to resolve an impasse shall be binding on the parties and on the appropriate legislative body and made effective and enforceable pursuant to the provisions of chapter one hundred and fifty C, provided that said arbitration proceeding has been authorized by the appropriate legislative body or in the case of school employees, by the appropriate school committee.

If the impasse continues after the publication of the fact-finder's report, the issues in dispute shall be returned to the parties for further bargaining.

Any time limitations prescribed in this section may be extended by mutual agreement of the parties and the board.

Upon the filing of a petition pursuant to this section for a determination of an impasse following negotiations for a successor agreement, an employer shall not implement unilateral changes until the collective bargaining process, including mediation, fact finding or arbitration, if applicable, shall have been completed and the terms and conditions of employment shall continue in effect until the collective bargaining process, including mediation, fact finding or arbitration, if applicable, shall have been completed; provided, however, that nothing contained herein shall prohibit the parties from extending the terms and conditions of such a collective bargaining agreement by mutual agreement for a period of time in excess of the aforementioned time. For purposes of this paragraph, the board shall certify to the parties that the collective bargaining process, including mediation, fact finding or arbitration, if applicable, has been completed.

Any person acting as a mediator in a labor dispute, including any person acting as such pursuant to the provisions of this chapter, who receives information as a mediator relating to the labor dispute shall not be required to reveal such information received by him in the course of mediation in any administrative, civil or arbitration proceeding. Nothing herein contained shall apply to any criminal proceedings.

Section 9A. Strikes prohibited; investigation; enforcement proceedings.

(a) No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.

(b) Whenever a strike occurs or is about to occur, the employer shall petition the commission to make an investigation. If, after investigation, the commission determines that any provision of paragraph (a) of this section has been or is about to be violated, it shall immediately set requirements that must be complied with, including, but not limited to, instituting appropriate proceedings in the superior court for the county wherein such violation has occurred or is about to occur for enforcement of such requirements.

Section 10. Prohibited practices.

(a) It shall be a prohibited practice for a public employer or its designated representative to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

(2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

(3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;

(4) Discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because he has informed, joined, or chosen to be represented by an employee organization;

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section six;

(6) Refuse to participate in good faith in the mediation, fact-finding, and arbitration procedures set forth in sections eight and nine;

(b) It shall be a prohibited practice for an employee organization or its designated agent to:

(1) Interfere, restrain, or coerce any employer or employee in the exercise of any right guaranteed under this chapter;

(2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section six;

(3) Refuse to participate in good faith in the mediation, fact finding and arbitration procedures set forth in sections eight and nine.

Section 11. Complaints; investigation; hearing; orders; review.

When a complaint is made to the commission that a practice prohibited by section ten has been committed, the commission may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. The commission may dismiss a complaint without a hearing if it finds no probable cause to believe that a violation of this chapter has occurred or if it otherwise determines that further proceedings would not effectuate the purposes of this chapter. If a hearing is ordered, the commission shall set the time and place for the hearing, which time and place may be changed by the commission at the request of one of the parties for cause shown. Any complaint may be amended with the permission of the commission. The employer, the employee organization or the person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as the commission may limit. Such employer, such employee organization or such person shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission any person may be allowed to intervene in such proceeding.

In any hearing the commission shall not be bound by the technical rules of evidence prevailing in the courts. While retaining jurisdiction the commission may refer to the board or a joint labor management committee any matter alleging a refusal to bargain in good faith as required by section ten.

Whenever it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative as required in section ten and that such refusal is based upon a dispute involving the appropriateness of a bargaining unit, the commission shall, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. Where such interim order is issued the commission shall hold a hearing on the charge in a summary manner and shall speedily determine the issues raised and shall make an appropriate decision.

Upon any complaint made under this section the commission in its discretion may order that the hearing be conducted by a member or agent of the commission. At such hearing the employer, the employee organization or the person so complained of shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the commission, any person may be allowed to intervene in such proceeding. In any hearing the member or agent shall not be bound by the technical rules of evidence prevailing in the courts. At the conclusion of the hearing, the member or agent shall determine whether a practice prohibited under section ten has been committed and if so, he shall issue an order requiring it or him to cease and desist from such prohibited practice. If the member or agent determines that a practice prohibited under section ten has not been committed, he shall issue an order dismissing the complaint. Any order issued pursuant to this paragraph shall become final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. A review may be made upon a written statement of the case by the member or agent agreed to by the parties, or upon written statements furnished by the parties, or upon such portions of the record of the hearing as the parties or commission may designate. The record in such cases shall consist of the pleadings, motions, rulings and the testimony taken at the hearing. The testimony may be preserved by a taped recording or by stenographic transcription, at the determination of the commission.

If, upon all the testimony, the commission determines that a prohibited practice has been committed, it shall state its findings of fact and shall issue and cause to be served on the party committing the prohibited practice an order requiring it or him to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. It shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this section. If, upon all of the testimony, the commission determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and shall issue a final order dismissing the complaint. The commission may institute appropriate proceedings in the appeals court for enforcement of its final orders. Any party aggrieved by a final order of the commission may institute proceedings for judicial review in the appeals court within thirty days after receipt of said order. The proceedings in the appeals court shall, insofar as

applicable, be governed by the provisions of section fourteen of chapter thirty A. The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the commission's order.

Section 12. Service fee; imposition; amount; discrimination.

The commonwealth or any other employer shall require as a condition of employment during the life of a collective bargaining agreement so providing, the payment on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, of a service fee to the employee organization which in accordance with the provisions of this chapter, is duly recognized by the employer or designated by the commission as the exclusive bargaining agent for the unit in which such employee is employed; provided, however, that such service fee shall not be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting.

Prior to the vote, the exclusive bargaining agent shall make reasonable efforts to notify all employees in the unit of the time and place of the meeting at which the ratification vote is to be held, or any other method which will be used to conduct the ratification vote. The amount of such service fee shall be equal to the amount required to become a member and remain a member in good standing of the exclusive bargaining agent and its affiliates to or from which membership dues or per capita fees are paid or received. No employee organization shall receive a service fee as provided herein unless it has established a procedure by which any employee so demanding may obtain a rebate of that part of said employee's service payment, if any, that represents a pro rata share of expenditures by the organization or its affiliates for:

(1) contributions to political candidates or political committees formed for a candidate or political party;

(2) publicizing of an organizational preference for a candidate for political office;

(3) efforts to enact, defeat, repeal or amend legislation unrelated to the wages, hours, standards of productivity and performance, and other terms and conditions of employment, and the welfare or the working environment of employees represented by the exclusive bargaining agent or its affiliates;

(4) contributions to charitable, religious or ideological causes not germane to its duties as the exclusive bargaining agent;

(5) benefits which are not germane to the governance or duties as bargaining agent, of the exclusive bargaining agent or its affiliates and available only to the members of the employee organization.

It shall be a prohibited labor practice for an employee organization or its affiliates to discriminate against an employee on the basis of the employee's membership, nonmembership or agency fee status in the employee organization or its affiliates.

Section 13. List of employee organizations; required information; filing; compliance, enforcement.

The commission shall maintain a list of employee organizations. To be recognized as such and to be included in the list an organization shall file with the commission a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations. Every employee organization shall notify the commission promptly of any change of name or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

The commission shall indicate on the list which employee organizations are exclusive representatives of appropriate bargaining units, the effective dates of their certification, and the effective date and expiration date of any agreement reached between the public employer and the exclusive representative. Copies of such list shall be made available to interested parties upon request.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the superior court for the county wherein such violation has occurred in the same manner as other orders of the commission under this chapter.

Section 14. Information statement and financial report required of employee organizations; filing; enforcement.

No person or association of persons shall operate or maintain an employee organization under this chapter unless and until there has been filed with the commission a written statement signed by the president and secretary of such employee organization setting forth the names and addresses of all of the officers of such organization, the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid to the officers.

Every employee organization shall keep an adequate record of its financial transactions and shall make annually available to its members and to non-member employees who are required to pay a service fee under section twelve of this act, within sixty days after the end of its fiscal year, a detailed written financial report in the form of a balance sheet and operating statement. Such report shall indicate the total of its receipts of any kind and the sources of such receipts, and disbursements made by it during its last fiscal year. A copy of such report shall be filed with the commission.

In the event of failure of compliance with this section, the commission shall compel such compliance by appropriate order, said order to be enforceable in the superior court for the county wherein such violation has occurred in the same manner as other orders of the commission under this chapter.

Section 15. Penalties.

Whoever willfully assaults, physically resists, prevents, impedes, or interferes with a mediator, fact-finder, or arbitrator, or any member of the commission or any of the agents or employees of the commission in the performance of duties pursuant to this chapter shall be fined not more than five thousand dollars, or imprisoned not more than one year, or both.

Whoever knowingly files a statement or report under section fourteen of this chapter, which report is false in any material representation, shall be punished by a fine of not more than five thousand dollars.

No compensation shall be paid by an employer to an employee with respect to any day or part thereof when such employee is engaged in a strike against said employer. No such employee shall be eligible for such compensation at a later date in the event that such employee is required to work additional days to fulfill the provisions of a collective bargaining agreement, except in the instance when a regional or local school district does not receive authorization for a shortened school year from the department of education, in which case such employee shall be eligible for compensation at his regular rate for such additional days worked.

Any employee who engages in a strike shall be subject to discipline and discharge proceedings by the employer.

**CHAPTER 1078, SECTION 4A OF THE ACTS OF 1973, AS AMENDED²
AN ACT RELATIVE TO COLLECTIVE BARGAINING BY PUBLIC EMPLOYEES**

Section 4A. (1)(a)(i) There shall be in the executive office of labor, but not subject to the jurisdiction thereof, a committee to be known as the joint labor-management committee, in this section referred to as the committee. The committee shall be composed of 15 members including a chairman and a vice-chairman and such alternate members as the committee shall approve. Twelve committee members shall be appointed by the governor as follows: 3 firefighters from nominations submitted by the Professional Firefighters of Massachusetts, International Association of Firefighters, AFL-CIO; 3 police officers from nominations submitted by the International Brotherhood of Police Officers, NAGE, SEIU, AFL-CIO, the Boston Patrolmen's Association IUPA, AFL-CIO, the Massachusetts Coalition of Police, IUPA, AFL-CIO; and the Massachusetts Police Association and 6 from nominations submitted by the Advisory Committee on Local Government established under section 62 of chapter 3 of the General Laws. Said twelve members shall be appointed for a term of three years; provided however that in making his initial appointments, the governor shall appoint one member nominated by said professional firefighters organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; one member nominated by said professional police organization for a term of one year, one such member for a term of two years, and one such member for a term of three years; and two members nominated by said advisory commission for a term of one year; two such members for a term of two years, and two such members for a term of three years. Any member of the committee may be removed by the governor for neglect of duty, malfeasance in office, or upon request by the nominating body.

² Chapter 1078, Section 4 of the Acts of 1973 created a dispute resolution procedure for municipal police officers and fire fighters, and provided that the procedure would expire on June 30, 1977; Chapter 347 of the Acts of 1977 rewrote Section 4 and extended its provisions through June 30, 1979; Chapter 730 of the Acts of 1977 added Section 4A, creating the Joint Labor-Management Committee; Chapter 154 of the Acts of 1979 rewrote Section 4A and extended the provisions of Section 4 through June 30, 1983; Chapter 580, Section 10 of the Acts of 1980 repealed Section 4; Chapter 351, Section 239 of the Acts of 1981 amended Section 4A; Chapter 594 of the Acts of 1979 inserted a Section 4B, adding a dispute resolution procedure for certain members of the State Police and Metropolitan District Commission and providing that the procedure would expire on June 30, 1983; Chapter 726 of the Acts of 1985 rewrote Section 4B to apply only to certain members of the State Police and inserted a Section 4C, applying to certain members of the Metropolitan District Commission, and extended the provisions of Sections 4B and 4C through June 30, 1988; Chapter 589 of the Acts of 1987 rewrote Section 4A, creating a new dispute resolution procedure for municipal police officers and fire fighters; Chapter 333 of the Acts of 1988 extended the provisions of Sections 4B and 4C through June 30, 1991 (however, there were no further extensions); and Chapter 300, Section 14 of the Acts of 2002 amended Section 4A.

(ii) The chairman and vice-chairman shall be nominated by the committee, and appointed by the governor for a term of three years. The chairman shall be the chief administrative officer of the committee. The vice-chairman shall assist the chairman and may be authorized by the chairman to act for him in his absence and shall have the full powers of the chairman when so authorized and he shall vote only in the absence of the chairman.

(iii) Alternate members may serve for such term and under such conditions, as the committee shall determine. Said professional police organizations, professional fire organizations, and said advisory commission shall specify alternate members to represent their respective members, subject to the approval of the full committee.

(b) In matters exclusively pertaining to municipal firefighters, committee members nominated for appointment by professional police officer organizations shall not vote. In matters exclusively pertaining to municipal police officers, committee members nominated for appointment by professional firefighter organizations shall not vote. All committee members shall be eligible to vote on matters of common and general interest. The number of committee members representing the local government advisory committee and the number of committee members representing the professional firefighter or police organizations entitled to vote on any matter coming before the committee shall be equal. The chairman may cast the deciding vote on any matter relating to a dispute concerning negotiations over the terms and provisions of a collective bargaining agreement, including any decision to take jurisdiction over a dispute.

(c) Members and alternate members of the committee shall serve without compensation, but shall be entitled to reimbursement, out of any funds available for the purpose, for reasonable travel or other expenses actually incurred in the performance of their committee duties. The chairman and vice-chairman shall be compensated for time spent for the committee business on a per diem basis at a rate to be determined by the secretary of administration and finance. The committee may purchase supplies and equipment, and may employ clerical staff and other personnel who shall not be subject to the provisions of section nine A of chapter thirty or chapter thirty-one of the General Laws, as they deem necessary to the conduct of committee business out of any funds available for the purpose. Members and alternate members of the committee employed by a municipality shall be granted leave, if on duty, by the municipal employer for those regularly scheduled work hours spent in the performance of committee business.

(2)(a) The committee shall have oversight responsibility for all collective bargaining negotiations involving municipal police officers and firefighters. The committee shall, at its discretion, have jurisdiction in any dispute over the negotiations of the terms of a collective bargaining agreement involving municipal firefighters or police officers; provided, however, that the committee may determine whether the proceedings for the prevention of any prohibited practices filed with the labor relations commission shall or shall not prevent arbitration pursuant to this section.

(b) After notification by the committee, the parties to any municipal police and fire negotiations shall file with the committee, in such time as the committee orders:

(1) copies of all requests to bargain and of all bargaining agenda;

- (2) notification of the apparent exhaustion of the processes of collective bargaining;
- (3) notification of all pending unfair labor practice proceedings between the parties;
- (4) copies of any fact-finding reports;
- (5) notification of any impasse extending beyond completion of fact-finding procedures;
- (6) copies of any collective bargaining agreements, and any relevant personnel ordinances, by-laws, and rules and regulations; and
- (7) such other information as the committee may reasonably require.

(c) Notwithstanding the provisions of the first paragraph of section nine of chapter one-hundred and fifty E of the General Laws to the contrary, when either party or the parties acting jointly to a municipal police and fire collective bargaining negotiations believe that the process of collective bargaining has been exhausted the party or both parties shall petition first the committee for the exercise of jurisdiction and for the determination of the apparent exhaustion of the process of collective bargaining.

The committee shall forthwith review the petition and shall make a determination within thirty days whether to exercise jurisdiction over the dispute. Subject to the second paragraph of clause (d) of this subdivision, if the committee declines to exercise jurisdiction over the dispute or fails to act within thirty days of receipt of the petition on jurisdiction, the petition shall be automatically referred to the board of arbitration and conciliation hereinafter referred to as the board, for disposition in accordance with the provisions of section nine of chapter one hundred and fifty E of the General Laws.

The petition to the committee shall identify the issues in dispute, the parties, the efforts of the parties to resolve the dispute and such other information as may be prescribed in the rules of the committee.

Said board shall not accept any petition from a party to a municipal police and fire negotiation under section nine of chapter one hundred and fifty E of the General Laws if the petition has not been first reviewed in accordance with the provisions of this section by the committee.

(d) The committee or its representatives or mediators appointed by it may meet with the parties to a dispute, conduct formal or informal conferences, and take other steps including mediation to encourage the parties to agree on the terms of a collective bargaining agreement or the procedures to resolve the dispute. The committee shall make every effort to encourage the parties to engage in good faith negotiations to reach settlement through negotiation or mediation, and may, upon a vote of the committee, initiate fact-finding proceedings.

The committee after consultation with the board of arbitration and conciliation may remove at any time from the jurisdiction of the board any dispute in which the board has exercised jurisdiction, and the board shall then take no further action in such dispute. The committee may, at any time, remand to the board any dispute over which the committee has exercised jurisdiction. The board shall assist and cooperate with the committee in its

performance of the committee's duties. Disputes over which the committee does not exercise jurisdiction shall be governed by all other applicable provisions of law.

(3)(a) The committee shall have exclusive jurisdiction in matters over which it assumes jurisdiction and shall determine whether issues in negotiations have remained unresolved for an unreasonable period of time resulting in the apparent exhaustion of the processes of collective bargaining. If the committee makes such a determination it is authorized to hold a hearing to identify:

- (1) the issues that remain in dispute;
- (2) the current positions of the parties;
- (3) the views of the parties as to how the continuing dispute should be resolved; and
- (4) the preferences of the parties as to the mechanism to be followed in order to reach a final agreement between the parties.

If the committee, after a full hearing, finds there is an apparent exhaustion of the processes of collective bargaining which constitutes a potential threat to public welfare, it shall so notify the parties of its findings.

Within ten days of such notification, the committee shall also notify the parties of its intent to invoke such procedures and mechanisms as it deems appropriate for the resolution of the collective bargaining negotiations. Such procedures and mechanisms may include, but need not be limited to:

- (1) any form of arbitration, including, but not limited to, conventional arbitration, issue by issue or last best offer;
- (2) arbitration for all or any issue in dispute; provided, however, that the committee may direct the parties to conduct further negotiations concerning issues not specified for arbitration;
- (3) single arbitrators, including the chairman, vice-chairman or an outside neutral arbitrator;
- (4) an arbitration board, which may include labor and public management representatives as voting or non-voting members;
- (5) separate stages or procedures for the executive and legislative bodies of a municipality.

The factors to be given weight in any decision or determination resulting from the mechanism or procedures determined by the committee to be followed by the parties in order to reach final agreement pursuant to this section shall include, but not be limited to:

- (1) such an award which shall be consistent with: (i) section twenty-one C of chapter fifty-nine of the General Laws, and (ii) any appropriation for that fiscal year from the fund established in section two D of chapter twenty-nine of the General Laws;
- (2) the financial ability of the municipality to meet costs. The commissioner of revenue shall assist the committee in determining such financial ability. Such factors which shall be taken into consideration shall include but not be limited to: (i) the city, town, or

district's state reimbursements and assessments; (ii) the city, town or district's long and short term bonded indebtedness; (iii) the city, town, or district's estimated share in the metropolitan district commission's deficit; (iv) the city, town, or district's estimated share in the Massachusetts Bay Transportation Authority's deficit; and (v) consideration of the average per capita property tax burden, average annual income of members of the community, the effect any accord might have on the respective property tax rates on the city or town;

(3) the interests and welfare of the public;

(4) the hazards of employment, physical, educational and mental qualifications, job training and skills involved;

(5) a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities;

(6) the decisions and recommendations of the factfinder, if any;

(7) the average consumer prices for goods and services, commonly known as the cost of living;

(8) the overall compensation presently received by the employees, including direct wages and fringe benefits;

(9) changes in any of the foregoing circumstances during the pendency of the dispute;

(10) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment;

(11) the stipulation of the parties.

Any decision or determination resulting from the mechanism or procedures determined by the committee if supported by material and substantive evidence on the whole record shall be, subject to the approval by the legislative body of a funding request as set forth in this section, binding upon the public employer and employee organization, as set forth in chapter one hundred and fifty E of the General Laws, and may be enforced at the instance of either party or the committee in the superior court in equity; provided, however, that the scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees; and provided, further, that the scope of arbitration in firefighter matters shall not include the right to appoint and promote employees. Assignments shall not be within the scope of arbitration; provided, however that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of

arbitration. Notwithstanding any other provisions of this act to the contrary, no municipal employer shall be required to negotiate over subjects of minimum manning of shift coverage, with an employee organization representing municipal police officers and firefighters. Nothing in this section shall be construed to include within the scope of arbitration any matters not otherwise subject to collective bargaining under the provisions of chapter one hundred and fifty E of the General Laws. The employer shall submit to the appropriate legislative body within thirty days after the date on which the decision or determination is issued a request for the appropriation necessary to fund such decision or determination, with his recommendation for approval of said request. Notwithstanding the foregoing, where the legislative body is a town meeting, such request shall be made to the earlier of (i) the next occurring annual town meeting, or (ii) the next occurring special town meeting. The employer and the exclusive employee representative shall support any such decision or determination in the same way and to the same extent that the employer or the exclusive representative, respectively, is required to support any other decision or determination agreed to by an employer and an exclusive employee representative pursuant to the provisions of said chapter one hundred and fifty E of the General Laws. If the municipal legislative body votes not to approve the request for appropriation, the decision or determination shall cease to be binding on the parties and the matter shall be returned to the parties for further bargaining. The committee may take such further action as it deems appropriate, including without limitation, inquiring as to the municipal legislative body's vote.

The commencement of a new municipal finance year prior to the final awards by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

If a municipal employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court. Such fine shall be in addition to such other remedies as the court may determine.

No member of a unit of municipal police officers or firefighters who is employed on a less than full-time basis shall be subject to the provisions of this clause.

When the parties to a municipal police or fire collective bargaining negotiation jointly design their own dispute resolution procedures, they may divest the committee of jurisdiction by presenting a written agreement of their procedures to the committee; provided, however, that the committee finds that said procedures provide for a final resolution of the dispute, without resort to strike, job action, or lockout; and provided, further that if the committee subsequently finds that either of the parties fails to abide by said procedures, the committee shall assume jurisdiction of the dispute. (Section 3 of chapter five hundred and eight-nine of the acts of 1987 provides that clause (a) of subdivision (3) of section four A shall cease to be operative on April first, nineteen hundred and ninety, and any arbitration proceeding pending on April first, nineteen hundred and ninety shall be completed under the provisions of said clause (a).)

(b) In any dispute resolution conducted by other than the committee or its members or staff, the parties shall share and pay equally the costs involved in such resolution; provided, however, that pursuant to a vote of the committee and subject to the availability of funds for the purpose thereof, said costs may be paid by the committee.

(c) The committee shall have jurisdiction in any particular dispute concerning job titles over which the parties have negotiated or to remove specific job titles from collective bargaining for individuals performing certain specific management duties.

(4) The committee shall promulgate rules and regulations necessary for the performance and enforcement of the responsibilities and powers set forth in this act; provided, however, that said committee file a copy of any regulations or amendments thereto with the clerks of the senate and the house of representatives who, with the approval of the president of the senate and speaker of the house of representatives, shall refer such regulations to an appropriate committee of the general court. Within thirty days after such filing, the appropriate committee of the general court shall hold a hearing on such regulations and shall issue a report and file a copy with the joint labor-management committee. Said joint labor-management committee shall consider such report and make revisions in the regulations as it deems appropriate in view of such report and shall forthwith file a copy of the final regulations with the chairman of the committee of the general court to which the regulations were referred.

On or before the first Wednesday of each year in which the provisions of clause (a) of subdivision (3) of this section are in effect, the committee shall file with the clerks of the senate and the house of representatives, and with the chairmen of the special commission on dispute resolution established under chapter two of the resolves of nineteen hundred and eighty-four, a report assessing the efficacy of the provisions of said clause in decreasing the length and severity of municipal public safety bargaining disputes, and the other impacts, if any, of said provisions of the collective bargaining process. Such report shall include a full listing of any matters in which the provisions of said clause were invoked during the previous twelve months, and the final disposition of any such matters, together with the committee's recommendations, if any, for the modification or extension of said provisions.

The provisions of chapter thirty A of the General Laws, unless otherwise provided, shall apply to the committee.

The committee shall have the power to administer oaths to require by subpoena the attendance and testimony of witnesses, production of books, records, and other evidence relative to or pertinent to the issues presented to the committee.

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M.G.L. c. 23C. BOARD OF CONCILIATION AND ARBITRATION*Section 1. Declaration of policy.*

It is hereby declared to be the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; and it shall be the responsibility and objective of the board of conciliation and arbitration to take such steps as will most effectively and expeditiously encourage the parties to a labor dispute to agree on the terms of a settlement or to agree on the method and procedure which shall be used to resolve a dispute.

It is recognized that a constructive and harmonious long-term collective bargaining relationship is the most positive way to avoid labor disputes, and such a relationship can be effectively developed in the public sector through the use of joint labor management committees.

Section 2. Board of conciliation and arbitration; appointment of chairman.

There shall be in the department of labor and workforce development, but not subject to the jurisdiction thereof, a department called the board of conciliation and arbitration.

The board of conciliation and arbitration shall be under the supervision and control of the chairman of said board who shall be appointed by the governor for a term of five years, and subsequent successors shall be appointed in like manner. Prior to appointing the chairman, the governor shall request the recommendations of the unions and employers who commonly are involved in matters under the jurisdiction of the board. Said chairman shall devote his whole time during business hours to the work of the board and shall not engage in any profession, practice, or business during said hours. The chairman may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

Section 3. Powers of chairman; joint labor management committees; interchange of members.

Notwithstanding the provisions of any general or special law to the contrary, the chairman of the board of conciliation and arbitration shall, subject to appropriation, appoint and have power to remove, a vice chairman and such mediators, investigators, arbitrators, and other employees and individuals as are necessary for the operation of the board, and may utilize such voluntary and uncompensated services, as may from time to time be needed and said chairman shall assign duties and responsibilities to such individuals. In the absence of the chairman, the vice chairman shall have the duties and responsibilities of the chairman. The employees of the board and the employees of the joint labor management committee, established under the provisions of section four A of chapter one thousand and seventy-eight of the acts of nineteen hundred and seventy-three, and the employees of any other joint labor management committee established under the provisions of any other general or special law, may be interchanged for the purposes of

resolving a particular labor dispute in the most efficient and expeditious manner, and assigned various duties and responsibilities at the discretion of said chairman after consultation with the chairman of the joint labor management committee which is involved in the interchange.

Section 4. Membership of conciliation and arbitration board; appointment by chairman; consultation.

The chairman and two other members shall constitute the board of conciliation and arbitration. The chairman shall be the neutral member of said board. One of the other members shall be a representative of labor, and one a representative of the employers of labor. The representatives of labor and the representatives of the employers shall be appointed by the chairman to serve on a case-by-case basis for grievance arbitrations. Prior to the appointment of said representatives, the chairman shall consult with the union and employer involved in the case and request their recommendation as to whether each wants a representative to sit on the case and if so, the representative who they recommend represent their interests on the board.

Notwithstanding any general or special law to the contrary, the chairman of the board may designate the neutral member of the board, the chairman, to act with full power of the board in the following situations: (1) as a single arbitrator in grievance arbitration of a public or private sector dispute arising under a collective bargaining agreement, (2) as a single neutral arbitrator, on any other type of grievance, dispute, or matter which the board would be required or have the authority to arbitrate under the terms of any general or special law, or provision in a collective bargaining agreement, (3) as a single member of the board on any matter not mentioned in (1) or (2) above which the board would be required or have the authority to hear, act on, or decide under the terms of any general or special law, or provision in a collective bargaining agreement. Notwithstanding any general or special law to the contrary, in the arbitration of a grievance arising under a public or private collective bargaining agreement, the chairman of the board may appoint a nonmember to act as a temporary neutral member of the board, or to act as the single neutral arbitrator with the full power of the board.

M.G.L. c. 23. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Section 9O. Labor relations commission; creation; members; appointment and removal; terms of office; vacancies; quorum; seal; reports.

(a) There shall be in the department of labor and workforce development, but in no respect subject to the jurisdiction thereof, a commission to be known as the Labor Relations Commission, in this and the three following sections referred to as the commission, which shall be composed of three members who shall be appointed by the governor, by and with the advice and consent of the executive council. Upon the expiration of the term of any member, his successor shall be appointed in like manner for a term of five years. Any vacancy in the commission shall be filled by appointment in like manner. The governor shall designate one member to serve as chairman of the commission. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission, and two members of the commission shall at all times constitute a quorum. The commission shall have an official seal which shall be judicially noticed.

(c) The commission shall at the close of each fiscal year make a report in writing to the general court stating in detail the cases it has heard, the decisions it has rendered, the names, salaries and duties of all employees and officers in the employ or under the supervision of the commission, and an account of all moneys it has disbursed.

Section 9P. Salaries; eligibility to reappointment; personnel; agencies, etc.

The positions of the chairman and other members shall be classified in accordance with section forty-five of chapter thirty and the salaries shall be determined in accordance with section forty-six C of said chapter thirty and each shall devote full time during business hours to the duties of his office and shall be eligible for reappointment. Members shall devote their whole time to the work of the commission and shall not engage in any profession, practice or business. The commission shall appoint an executive secretary, and such attorneys, examiners and regional directors and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by the general court. The commission may establish or utilize such regional, local or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the commission, appear for and represent the commission in any case in court. Nothing in this chapter shall be construed to authorize the commission to appoint individuals for the purpose of conciliation or mediation or for statistical work, where such service may be obtained from the department of labor and industries.

Section 9Q. Principal office; inquiries.

The principal office of the commission shall be in the city of Boston, but it may meet and exercise any or all of its powers at any other place. The commission may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the commonwealth. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the commission in the same case.

Section 9R. Rules and regulations.

The commission shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of sections nine O to nine Q, inclusive, of this chapter, chapter one hundred and fifty A, and chapter one hundred and fifty E. Such rules and regulations shall be effective upon publication in the manner in which the commission shall prescribe.

CHAPTER 151, SECTION 577 OF THE ACTS OF 1996

Section 577. (a) Notwithstanding any general or special law to the contrary, commencing July first, nineteen hundred and ninety-six, the parties to any proceeding conducted pursuant to section eleven of chapter one hundred and fifty E of the General Laws, shall be afforded the opportunity to forego the hearings before the labor relations commission referenced therein and choose to have the matter heard by an impartial and qualified arbitrator selected, at the parties' option, pursuant to the procedures established by the board of conciliation and arbitration as provided by chapter one hundred and fifty of the General Laws or through procedures established by the American Arbitration Association. Submission of the matter to arbitration, in lieu of proceedings before the commission, shall occur only with the voluntary, written and notarized consent of all the parties to the proceeding; provided, however, that once such written and notarized consent is submitted to the commission by all parties to the proceeding, the parties shall be obligated to comply with all procedural requirements necessary to bring the matter to arbitration and shall be bound by the decision of the arbitrator to the same extent as a decision of the commission, subject only to the provisions for judicial review by the appeals court as provided in the last paragraph of said section eleven. Failure of a party, who has consented to arbitration, to comply with the procedural requirements necessary to bring the matter to resolution by an arbitrator shall be grounds for entry of a default judgement by the commission and the commission is hereby authorized and directed to establish procedures for determining whether such default judgement is warranted.

(b) The costs of such arbitration shall be borne by the parties to the proceedings in conformity with the rules and regulations established by the board of conciliation and arbitration or the American Arbitration Association, whichever is applicable. At the time that the commission notifies the parties that it has made a determination that there is probable cause to believe that a practice prohibited by section ten of said chapter one hundred and fifty E has been committed, the commission shall also inform all parties, in writing, of the availability of the arbitration alternatives, shall provide them with a copy of the applicable rules and regulations of the board of conciliation and arbitration and the American Arbitration Association, shall inform the parties that the costs of the arbitration alternative shall be borne by the parties and not the commission, and shall inform the parties that the election to submit the dispute to arbitration, in lieu of a hearing before the commission, can be made at any time up to thirty days prior to commencement of the hearing authorized in the first paragraph of said section eleven.

(c) An arbitrator, selected pursuant to this section, shall have the same authority and responsibilities with respect to such proceedings as the commission has in proceedings conducted under said section eleven. The decision of an arbitrator, pursuant to this section, shall be subject to judicial review as provided in the last paragraph of said section eleven. The arbitrator's decision shall be reviewed by the same standards set forth in said section eleven and shall be subject to the same deference that is afforded decisions of the commission, provided, however, that in the event of a conflict between a decision of an arbitrator and a prior decision of the labor relations commission, the decision of the commission shall be afforded greater deference. The party who initiated the proceedings before the commission pursuant to said section eleven shall file with the commission a

copy of the award of the arbitrator, notice of institution of proceedings for judicial review pursuant to said section eleven, and a copy of any decision of the court with respect to the arbitrator's award within ten days of the issuance or filing of such award, appeal or judicial decision.

(d) No later than March thirtieth, nineteen hundred and ninety-seven, the commission shall submit a report to the house and senate committees on ways and means documenting the number of cases in which the parties have elected the arbitration option, the number of such cases in which an arbitrator's award has issued, the number of such cases in which judicial review of the arbitrator's award has been sought and the number of cases in which the decision of the arbitrator has been affirmed or reversed by the court.